G045878

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

Citizen's Association of Sunset Beach,
Plaintiff and Appellant,
v.
Orange County Local Agency Formation Commission, City of Huntington Beach, et al.,
Defendants and Respondents.

On Appeal From The Superior Court of the State of California,
County of Orange
Case No. 30-2010-00431832
Honorable Frederick P. Horn

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE *AMICUS* BRIEF IN SUPPORT OF RESPONDENTS; PROPOSED BRIEF OF *AMICUS CURIAE*

Rick W. Jarvis, SBN 154479
Benjamin P. Fay, SBN 178856
JARVIS, FAY, DOPORTO & GIBSON
492 Ninth St., Suite 310
Oakland, CA 94607
Telephone: (510) 238-1400
Facsimile: (510) 238-1404

Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES and
CALIFORNIA STATE ASSOCIATION OF COUNTIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Federal Statutes

State Statutes

Rules

APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF

TO THE HONORABLE PRESIDING JUSTICE OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH DISTRICT, DIVISION THREE:

The League of California Cities ("the League") and the California State Association of Counties ("CSAC"), pursuant to Rule 8.200(c) of the California Rules of Court, request permission of the Presiding Justice to file the accompanying *amicus curiae* brief in support of Defendants and Respondents Orange County Local Agency Formation Commission ("OC LAFCO") and the City of Huntington Beach ("the City").

The League of California Cities is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide significance. The Committee has identified this case as being of such significance.

CSAC is a non-profit corporation with membership consisting of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsel's Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League, CSAC, and their member cities and counties have a substantial interest in the outcome of this case. This case raises important

questions regarding the inter-relationship between Proposition 218 (specifically Cal. Const. article XIII C), which requires voter approval of local taxes, and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov Code § 56000, *et seq.*) (hereafter, "the Cortese-Knox Act"), which generally provides, *inter alia*, for the annexation of territory to cities and other local agencies.

This appeal raises two specific issues which are of great importance to the League and CSAC. First, state law provides that, once territory is annexed to a city, it shall be subject to that city's existing taxes. (Gov. Code § 57330.) Appellant argues that Proposition 218's voter approval requirements apply to somehow give residents of such annexed territory the right to vote on such previously established taxes. Appellant contends that, without such voter approval, such annexation somehow cannot proceed (although the specific rationale of how Appellant reaches this conclusion is not clear). For reasons explained in greater detail in the attached proposed amicus brief, if the Court accepts Appellant's interpretation of Proposition 218, it would call into question the validity of most municipal annexations in the State of California under the existing procedures set forth in the Cortese-Knox Act – there is no practical way to reconcile Proposition 218's specific voter requirements with the annexation procedures set forth in the Cortese-Knox Act. Such a ruling would thus create much confusion and uncertainty in the law regarding annexations.

Second, Appellant specifically challenges the validity of long-standing procedures in the Cortese-Knox Act governing so-called "island annexations." Specifically, the Cortese-Knox Act provides more simplified procedures for the annexation of "islands" of unincorporated territory which are less than 150 acres in area, surrounded by incorporated cities (or the Pacific Ocean), and are developed or developing. Such unincorporated islands impose difficult burdens on both counties and cities – it is more

difficult, costly, and inefficient for counties to provide basic municipal services to such areas; and cities, as a practical matter, are often required to provide such services even though such islands are not part of the city's tax base and thus do not pay any share of the cost of providing services. In recognition of such difficulties, the Legislature allows for annexation of such islands without being subject to any protest or voting requirements. While Appellant contends that such "island annexation" provisions did not exist when Proposition 218 was adopted in 1996, they actually have long been a part of California's annexation laws, and have been upheld against various legal challenges in cases dating back at least to the early 1980s.

The League and CSAC believe that their perspective on these issues is important for the Court to consider and will assist the Court in deciding this matter. The undersigned counsel have examined the briefs on file in this case and is familiar with the issues involved and the scope of their presentation. This *amicus* brief primarily addresses relevant arguments which were not presented in the parties' briefs. We thus hereby request leave to allow the filing of the accompanying *amicus curiae* brief.

In compliance with subdivision (c)(3) of Rule 8.200, the undersigned counsel represent that they authored this brief in its entirety on a pro bono basis, that their firm is paying for the entire cost of preparing and submitting this brief, and that no party to this action or any other person either authored this brief or made any monetary contribution to fund the preparation or submission of this brief.

Dated: May 29, 2012 JARVIS, FAY, DOPORTO & GIBSON, LLP

By: _____

Rick W. Jarvis
Benjamin P. Fay
Attorneys for *Amicus Curiae* LEAGUE OF CALIFORNIA CITIES and CALIFORNIA STATE ASSOCIATION OF COUNTIES

AMICUS CURIAE BRIEF

I. INTRODUCTION

Appellant in this case challenges the approval of the Orange County Local Agency Formation Commission ("OC LAFCO") of an application by the City of Huntington Beach ("the City") to annex Sunset Beach, which is a beachfront community of 134 acres that includes a mixture of residences and beach and tourist-related businesses. Because Sunset Beach was an unincorporated area of less than 150 acres surrounded entirely by two cities (Huntington Beach and Seal Beach) and the Pacific Ocean, it qualified as an isolated, unincorporated "island" that could be annexed pursuant to Government Code section 56375.3 (hereafter, "Section 56375.3"). While the Cortese-Knox Act provides that most annexations are subject to the right of residents to file protests which could lead to an election, Section 56375.3 exempts "island annexations" from such protest rights.[1]

Appellant's sole legal ground for challenging this annexation is that it results in residents within Sunset Beach being subject to the City's local taxes without first being given a right to vote on such taxes. Indeed, State law mandates that, whenever territory is annexed into a city, it (like all other territory in the city) shall then be subject to any of that city's "previously authorized taxes, benefit assessments, fees, or charges . . . ." (Cal. Gov. Code § 57330 (hereafter, "Section 57330").) Appellant argues that this mandate violates its members' right to vote on such taxes allegedly guaranteed by Proposition 218. Appellant specifically relies upon article XIII C, section 2(b) of the California Constitution (hereafter "Section 2(b)"), which provides that: "No local government may impose, extend, or

---

[1]Again, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Cal. Gov Code § 56000, *et seq.*), which is the current law governing annexations in the State of California, is abbreviated herein as "the Cortese-Knox Act."

increase any general tax unless that tax is submitted to the electorate and approved by a majority vote." (Cal. Const., art. XIII C, § 2(b).)

If Appellant's interpretation of Proposition 218 is accepted, it would put in doubt the legal validity of the vast majority of municipal annexations which occur in the State of California. There is no way to reconcile Proposition 218's specific voter approval requirements with long-standing state law provisions applicable to annexations, as set forth in the Cortese-Knox Act and its predecessors dating back several decades. The vast majority of California cities have local general and/or special taxes which are different from those that apply in surrounding unincorporated areas, and thus, under Appellant's interpretation, almost all annexations would trigger Proposition 218's mandatory tax-voting requirements. And yet, the majority of annexations occur under the Cortese-Knox Act without any election. And the mere existence of a "right to protest" under the annexation statutes clearly would not satisfy Proposition 218's mandate for an ***actual election***. And even where an election takes place, it would not necessarily satisfy Proposition 218's separate but similarly worded mandate for ***two-thirds*** voter approval of ***special*** taxes (which separate mandate Appellant conveniently ignores by making the apparent tactical decision to only mention ***general*** taxes – even though one of the City's taxes repeatedly mentioned by Appellant, the pre-Proposition 13 property tax used to secure public employee pensions, appears to be a special tax subject to the two-thirds voter requirement). Thus, while Appellant assures the court that its interpretation would only have a limited impact on a small percentage of annexations (i.e., island annexations which are exempt from protest procedures), the plain language of Proposition 218 and the annexation statutes belie that assurance.

Of course, these practical difficulties and inconsistencies only exist if the Court accepts Appellant's strained interpretation of Proposition 218.

The plain language of that act does not apply in the present case, where the only action being challenged is OC LAFCO's approval of an annexation – OC LAFCO took no action with respect to any local tax. It is clear that the voters never intended Proposition 218 to apply to require voter approval of ***pre-existing*** local taxes made applicable to newly-annexed territory solely by virtue of the annexation. While California's annexation laws were revised and re-adopted in 2000, all of their relevant provisions, including the provisions relating to annexation of "unincorporated islands" at issue in this appeal, are very similar to those which had long pre-dated Proposition 218. The Court should not interpret Proposition 218 to overturn existing, long-established annexation procedures absent some indication in the ballot materials that it was so intended. But, as Appellant concedes in its Reply (at page 5), "the issues raised in this case were not in mind" at the time Proposition 218 was adopted.

Appellant repeatedly insists that its interpretation of Proposition 218 would have only a limited impact on a small percentage of annexations, i.e., only island annexations where there is no right for residents to protest. Appellant argues that, where the annexation procedures give residents the right to protest (which ***could*** lead to an election, but ***only*** if there are a sufficient number of protests), then those annexations would somehow comply with its interpretation of Proposition 218. Appellant's attempt to distinguish island annexations from other annexations for the purposes of Proposition 218 is, of course, nonsense. Proposition 218 is an "all-or-nothing" proposition. It either applies in full force, or it does not apply at all. There is no honest way to argue that the "island annexation" process violates Proposition 218 but that other annexations do not. If Proposition 218 applies to annexations, then its requirements for actual voter approval of taxes clearly would not be satisfied by the mere "right to protest," which right does not necessitate an actual election. Certainly, if a local

government purported to adopt a new general tax without first submitting it to the electorate, and instead merely included a provision which would allow for an election ***only*** if a certain percentage of residents first filed protests within a limited period of time, the proponents of Proposition 218 would be first in line to file litigation challenging the validity of such a tax.

Thus, a ruling that Proposition 218's requirements apply in the annexation context would have very broad implications for all future annexations, and would, at a minimum, create great uncertainty and confusion in the law. Whatever assurances Appellant now tries to offer that such a ruling would not apply so broadly will not, of course, be binding on any other future litigant.[2]

II. ARGUMENT

A. Nothing in the plain language of Proposition 218 requires voter approval before territory can be annexed to a city.

Nothing in Proposition 218 requires the holding of an election before territory may be annexed to a city, regardless of what taxes the city collects. In fact, Proposition 218 says nothing about annexations.

Appellant relies upon Section 2(b), which, again, provides that "[n]o local government may impose, extend, or increase any general tax unless

---

[2]Appellant in this case happens to be represented by the Howard Jarvis Taxpayer Foundation – no relation to the coincidentally-named undersigned – who Appellant's Reply informs us is somehow related to the Howard Jarvis Taxpayer Association ("HJTA"), who sponsored Proposition 218. However, Appellant argues in pages 4 and 5 of its Reply that the prior statements of HJTA, including, for example, its prior support for the Proposition 218 Omnibus Interpretation Act – which was adopted unanimously by the Legislature to implement Proposition 218 with the unqualified support of HJTA and all other interested parties – are not binding on Appellant herein. Just as Appellant feels free to advocate positions which contradict prior positions of Proposition 218's sponsor, HJTA will no doubt likewise feel free, in the future, to advocate any other position it wants, however much it might contradict whatever assurances Appellant seeks to provide in this appeal.

and until that tax is submitted to the electorate and approved by a majority vote." But Appellant does not allege any facts which show that any local government violated this prohibition. The only relevant action being challenged herein is OC LAFCO's approval of the annexation of Sunset Beach to the City. OC LAFCO took no action relative to any tax, and, as its separate response brief makes clear, OC LAFCO has no interest in what taxes the City collects or imposes. Appellant also vaguely complains about the City taking improper actions (see, e.g., Appellant's Reply at page 8, which suggests that the City moved its own boundary line), but the City has taken no relevant action in this case – under Government Code section 56375.3, only OC LAFCO, not the City, had the authority to approve the annexation – the City could not, and did not, change its own boundaries. Appellant does not allege any actual action taken by the City which could be deemed a violation of Section 2(b)'s prohibition barring any local government from imposing, extending, or increasing its general tax.

Appellant's real complaint is with an action taken by the State Legislature. In 1993 (before Proposition 218 was adopted), the State Legislature adopted Section 57330, which, again, provides that "[a]ny territory annexed to a city or district shall be subject to the levying or fixing and collection of any previously authorized taxes, benefit assessments, fees, or charges of the city or district." Under this law, once Sunset Beach was annexed to the City, its territory became subject to the City's taxes. Thus, it is a mandate of the State Legislature (and a sensible mandate at that) which leaves residents within Sunset Beach subject to the City's taxes, even though neither the City nor the OC LAFCO ***themselves*** took any action to "impose, extend, or increase" any tax.

By its plain terms, Section 2(b) only applies to prohibit ***a local agency*** from imposing, extending, or increasing a tax. It does not apply to acts of the State Legislature or mandates imposed by State law, and it does

not apply to OC LAFCO's legally independent act of approving the annexation, which act in no way referenced (let alone imposed, extended, or increased) any tax. In other words, the mere fact that Section 57330 mandates that, after being annexed to a city, territory is subject to that city's taxes, does not mean that a LAFCO's independent approval of such annexation constitutes an action to "impose, extend, or increase any general tax" prohibited by Section 2(b).

The argument *amici* set forth above, while differently stated, is similar to the argument set forth in the response brief filed by OC LAFCO. OC LAFCO correctly argues in support of the Superior Court's finding that Section 56375.3 required OC LAFCO to approve the annexation, and that such approval was not itself prohibited by Section 2(b). (See OC LAFCO's response brief at pp. 11-16; see also, City's response brief at p. 41, n. 19.) It is thus clear that, contrary to Appellant's argument in its Reply (at pp. 5-7), this important legal issue has not somehow been "abandoned." As the issue was fully and persuasively addressed in OC LAFCO's brief, *amici* will not further brief it here.[3]

---

[3]Appellant suggests that OC LAFCO "has no dog in this fight" and that "it should not care whether [its interest in promoting efficient delivery of public services] is accomplished through the annexation of Sunset Beach, or through the incorporation of Sunset Beach as its own city." (Appellant's Reply at p. 40.) Appellant misunderstands the role that LAFCOs serve. Each LAFCOs is made up of two members of the county board of supervisors, two city mayors or city council members, and one public representative. (Gov. Code § 56325.) The Legislature has expressly provided that their purposes include "efficiently providing government services and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances." (Gov. Code § 56301.) "When the formation of a new government entity is proposed, [LAFCO] shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner." (*Id.*) Thus, while OC LAFCO is not interested in what taxes the City collects, it certainly is interested in the annexation itself.

The briefs submitted by Appellant and the City primarily focus on a different question – whether the words "impose," "extend" or "increase," as those words are used in Section 2(b), should be interpreted to apply to the application of the City's pre-existing taxes to Sunset Beach. Of course, *amici* agree with the arguments set forth in the City's response brief, including the persuasive arguments at pages 13 through 28 of that brief that those words should not be so interpreted. But, under *amici*'s separate argument set forth above (as well as the position set forth in OC LAFCO's separate response brief), this Court need not even reach that question, since, as a threshold matter, Section 2(b) does not apply to OC LAFCO's approval of the annexation in the first place.

B. Application of Proposition 218's tax voting requirement to annexations cannot be reconciled with the Cortese-Knox Act and would call into question the legal validity of most municipal annexations.

Appellant's tortured interpretation of Proposition 218, if accepted, would call into question the validity of the vast majority of municipal annexations in the State of California under the existing procedures set forth in the Cortese-Knox Act – there is, in fact, no practical way to reconcile Proposition 218's specific voter requirements with the annexation procedures set forth in the Cortese-Knox Act. Such a ruling would thus create much confusion and uncertainty in the law regarding annexations.

Clearly, the Cortese-Knox Act allows most annexations to happen without any election. Rather, in the case of most annexations (outside the context of "island annexations" discussed further below), the affected property owners ***only*** have a right to protest annexation – and it generally takes a protest filed by 25% of affected property owners or registered voters to trigger the need for an election (while a protest filed by 50% of affected property owners or registered voters prevents the annexation from going forward). (Gov. Code § 57075; see also, § 57075.5 [specifying conditions

in which a 15% protest may trigger the requirement for an election].)

By comparison, Section 2(b) of Proposition 218 mandates an ***actual*** election and ***actual*** approval "by a majority vote" of the electorate before a "local government may impose, extend, or increase any general tax." Thus, if Section 2(b)'s mandate were deemed to apply to any annexation, that mandate clearly would not be satisfied by anything less than an actual election. Specifically, Section 2(b) clearly would not be satisfied by the Cortese-Knox Act's provisions which merely allow for residents to affirmatively protest the annexation, and which do not require an election absent protest filed by a certain percentage of residents – and it is, frankly, astonishing that any proponent of Proposition 218 would contend otherwise. Indeed, a ruling from this Court that Proposition 218 could be satisfied without an actual election – as urged by Appellant – would substantially weaken Proposition 218!

Furthermore, if Section 2(b) were construed to apply to annexation approvals, then Section 2(d) of Article XIII(C) would likewise apply. In language that is otherwise identical to Section 2(b), Section 2(d) requires that all ***special*** taxes be subject to a ***two-thirds*** vote (as compared to Section 2(b)'s requirement that ***general*** taxes are only subject to a ***majority*** vote).[4] Given the identical language in Sections 2(b) and 2(d), there is no way to argue that Section 2(b) applies unless Section 2(d) also applies.

Thus, under Appellant's interpretation of Proposition 218, any annexation of territory to a city would require not only an election, but also, in the case of a city with special taxes, the approval of two-thirds of the

---

[4]Section 2(d) provides in relevant part: "No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." Section 1 of Article XIII C includes definitions of "general tax" ("any tax imposed for general governmental purposes") and "special tax" ("any tax imposed for specific purposes"). (Cal. Const. art. XIII C, § 1, subds. (a), (d).)

voters. If the Court accepts this interpretation, then it will put into question the validity of any annexation to a city with special taxes for which there is not an actual election resulting in approval by at least two-thirds of the voters. (And, indeed, in this case, the City's "special property tax" described by Appellant at pages 12-13 of its opening brief appears to be such a special tax which would be subject to Proposition 218's "two-thirds" voter requirement.)

In its Reply, Appellant acknowledges that its interpretation could lead to an "administrative imbroglio" that would be "unworkable and inconsistent with the LAFCO Act" if a city tries to apply different taxes to newly annexed areas of the city (if those taxes are not approved by residents in the annexed area). (Reply at pp. 42-43.) Appellant's simplistic response to this problem is to suggest that the annexation simply cannot happen (or has to somehow be set aside if it has already happened) if the new residents do not approve the taxes. Thus, while Appellant insists that it is not really seeking to require an election on all annexations (see Reply at p. 44), it is clear that is exactly what Appellant is seeking. *Amici* have an even simpler resolution to these problems that avoids all confusion – do not try to apply Proposition 218 to annexations.

Appellant's various arguments that its interpretation would only have a limited effect on municipal annexations are without merit. For example, Appellant suggests that "not every annexation will involve new taxes" and that its interpretation will thus not apply "[i]f an annexing city collects no unique taxes, but only those taxes that residents of the county already pay . . . ." (Appellant's Opening Brief at p. 20.) However, as *amici* can affirm, the vast majority of cities in the state collect taxes – both general and, in many cases, special taxes – which are "unique" from the taxes of the surrounding county. All cities have the power to establish and assess their own taxes. (Cal. Const. art. XI, § 5; Gov. Code § 37100.5.) And while

property taxes are generally – but not always – subject to the statewide one-percent limit of Proposition 13; there are many other types of taxes which are not subject to such limitations – but are subject to Proposition 218 – and which can vary from jurisdiction to jurisdiction, including parcel taxes (see, e.g., *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481), sales and use taxes (see, e.g., Rev & Tax. Code §§ 7200-7226, Gov. Code §§ 26290 - 26293.4), business license taxes (see, e.g., Rev & Tax Code § 17041.5, Gov. Code §§ 37101, 50026, Bus. & Prof. Code §§ 16000-16004), utility users' taxes (see, e.g. *AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 753), transient occupancy taxes (see Rev. & Tax. Code §§ 7280-7283.51), and taxes on online travel companies (see, e.g., *City of Anaheim v. Superior Court* (2009) 179 Cal.App.4th 825, 830).[5]

Thus, contrary to Appellant's suggestion that "not every annexation will involve new taxes" (Appellant's Opening Brief at p. 20), *amici* can confidently represent to this Court that, yes, nearly every annexation to a city will, in fact, involve new taxes, and it would instead be "unique" to

---

[5]Just by way of one example, the undersigned counsel is currently representing several cities in the case *Sipple, et al., v. City of Alameda, et al.* Los Angeles Superior Court Case No. BC 462270, which is a lawsuit that has been brought against over 130 California cities (plus two counties) seeking a refund of certain utility users cell phone taxes. Each of the 130+ cities has its own, unique utility users cell phone tax, different from what is collected in the surrounding county. The 130+ defendant cities in this case range in size from big cities like Los Angeles to smaller cities like Gonzales and Soledad. Each of these city's taxes is a general tax subject to Proposition 218's requirements, and, as mandated by federal law (4 U.S.C. § 117), these taxes are assessed based upon the address that is the place of primary use for the respective cell phone. Thus, under Appellant's theory, if such an address is annexed to a city that has such a utility users cell phone tax, that cell phone user would then have the right to vote on whether that pre-existing tax – assessed against all other similarly situated cell phone users within the city – should be assessed against that user. Again, this is just one example of the many "unique" taxes each California city may have.

find an example of such an annexation that did not.

In another attempt to argue that it is only seeking a limited ruling, Appellant focuses its challenge on section 56375.3, which requires LAFCOs to approve the annexation of so-called "islands" without any right for residents or property owners to file a protest, and thus without any possibility of an election. That section mandates such approval when certain specified conditions are met, including that the annexation "is proposed by resolution adopted by the affected city" (§ 56375.3, subd. (a)(1)(B)), that the island "does not exceed 150 acres in area" (*id.*, subd. (b)(1)), that "the territory constitutes an entire unincorporated island located within the limits of a city . . ." (*id.*, subd. (b)(2)), that this island is essentially surrounded by the annexing city either by itself, or together with the Pacific Ocean and/or one or more other cities (*id.*, subd, (b)(3)), and that the island "is substantially developed or developing" (*id.*, subd. (b)(4)).

In so focusing its challenge, Appellant makes the astonishing claim that, while island annexations violate Proposition 218 because they allow no possibility for an election, other annexations do not violate Proposition 218 because they allow for a vote. (See, e.g., Appellant's Reply at pp. 18 [suggesting that "traditional annexations . . . already accommodate the right to vote on taxes by giving residents in the territory to be annexed a vote on annexation"], 28 ["As to the regular annexation statute, because it already included a right to vote on the whole package (annexation plus taxes) there was no reason to perceive a conflict between LAFCO's authorizing statute and Proposition 218's proposed right to vote on taxes."], 33 [suggesting that regular annexations are valid because Proposition 218 only "requires some mechanism for voter approval"].) However, again, the Cortese-Knox Act does ***not*** require any election before an annexation may take place, unless a sufficient number of protests are filed. And Proposition 218 does not merely require "some mechanism for voter approval" – it requires an actual

election! If, as Appellant suggests, Proposition 218 really does apply in the context of annexations, it imposes very specific requirements. It cannot be satisfied merely with a "right to protest." Nor, in the case of special taxes, can it be satisfied with a mere majority vote.

Thus, application of Proposition 218 to annexations would clearly call into question the legality of most annexations under the Cortese-Knox Act. As cogently argued in the City's response brief (at pp. 28-39), Proposition 218 should not be interpreted to invalidate the existing, long-established statutory procedures for annexations, in the absence of any indication in any of the ballot materials that the voters so intended. But, as Appellant concedes in its Reply (at p. 5), "the issues raised in this case were not in mind at that time."[6]

Even if the Court were to accept Appellant's curious position that its interpretation of Proposition 218 could be applied only to "island annexations" without affecting other types of annexations, Appellant's assertion "that the island annexation law did not exist in 1996 when Proposition 218 was passed" (Reply at p. 26) – and thus could not have been contemplated by the voters – is simply not true. Nearly identical island annexation provisions existed since more than a decade before Proposition 218 was enacted. (See, *I.S.L.E. v. County of Santa Clara* (1983) 147 Cal.App.3d 72 [upholding validity of island annexations without right of protest and/or vote against equal protection challenge]; *Scuri v. Board of Supervisors* (1982) 134 Cal.App.3d 400, 406-407 [same].) These cases recognize "that the state has legitimate interests in avoiding annexation election expense for small communities, avoiding tiny

---

[6]And, of course, Appellant's argument on page 48 of its Reply that many annexations have happened in the past has no relevance to what future impact would result from a published decision by any court that annexations are subject to Proposition 218 requirements.

pockets of unincorporated territory and promoting orderly and efficient formation and determination of city boundaries." (*I.S.L.E.*, *supra*, 147 Cal.App.3d at 79-80.) More specifically, at the time Proposition 218 was adopted, Government Code section 56375, subdivision (d) had language that was very similar to the "island annexation" language that now is in Section 56375.3, which language is quoted in the footnote below.[7]

Finally, it should be noted that, even if Proposition 218 were to require an election before a city's taxes could be applied to newly-annexed territory, its requirements would be satisfied by a ***citywide*** election on the question of whether the city's existing taxes could be "extended" to the newly-annexed territory. All residents of the city – not just the residents of the annexed territory – would have a legitimate say in whether the new residents should be required to pay the same taxes every other resident already has to pay. A city and a LAFCO should not have to face the expense of a city-wide election every time an island is annexed.

---

[7]In 1996, Government Code section 56375 provided in relevant part:

"The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

". . .

"(d) To approve the annexation to a city after notice and hearing, and authorize the conducting authority to order annexation of the territory without an election, if the commission finds that the territory contained in an annexation proposal meets all of the following requirements:

"(1) It does not exceed 75 acres in area, that area constitutes the entire island, and the island does not constitute a part of an unincorporated area that is more than 100 acres in area.

" (2) It is surrounded in either of the following ways:

"(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

"(B) Surrounded by the city to which annexation is proposed and adjacent cities.

"(3) It is substantially developed or developing. . . ." (Stats. 1995, Ch. 91, § 55.)

III. CONCLUSION

Proposition 218 is an all or nothing proposition. If, as Appellant contends, it applies to municipal annexations where a city has its own taxes – which would cover the vast majority of municipal annexations – then its requirements would not be satisfied by the Cortese Knox Act's current – and long-standing – procedures which allow most annexations to happen without any election. Such an interpretation would thus call into question the legal validity of most municipal annexations and create much uncertainty and confusion in the law. For all of the reasons set forth in this brief, as well as in the two response briefs filed by the City and the OC LAFCO, this Court should reject Appellant's contention.

Dated: May 29, 2012 JARVIS, FAY, DOPORTO & GIBSON, LLP

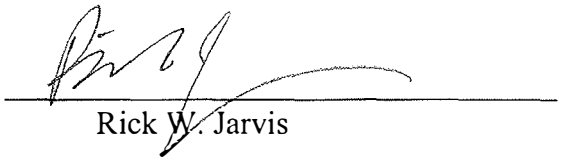
By: _____

Rick W. Jarvis
Benjamin P. Fay
Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES and
CALIFORNIA STATE ASSOCIATION OF
COUNTIES

WORD COUNT CERTIFICATION

I certify that this brief and accompanying application contains a total of 5,428 words as indicated by the word count feature of the Word Perfect computer program used to prepare it.

Dated: May 29, 2012



Rick W. Jarvis